

REMARKS

Reconsideration of this application including rejected pending claims 33-37 is respectfully requested.

In the final Official Action, the Examiner rejects claims 33-37 under the judicially created doctrine of non-statutory obviousness-type double patenting, asserting that the rejected claims are unpatentable over claims 1, 11 and 14 of newly issued commonly assigned US Patent No. 7,122,032 in view of US Patent No. 4,726,229, to Yamamoto, et al. (Yamamoto). Applicants respectfully disagree for at least the following reasons.

US Patent No. 7,122,032 (the '032 patent) is not prior art to this application under 35 USC 102, a requirement for using a reference in a prior art sense to establish a prima facie case of obviousness under Section 103(a), or as a reference for a non-statutory obviousness-type double patenting rejection. More particularly, because US Patent 7,122,032 was filed on May 14, 2003, based on its foreign application priority date of May 17, 2002 (JP 2002-142698), it cannot be prior art to this application under the judicially created doctrine of non-statutory obviousness-type double patenting (cannot be applied as §102 art) in view of the present application's US filing date.


Applicants' present application is a continuation application of U.S. Patent Application Serial No. 09/732,042, filed on December 7, 2000, which claims benefit of Japanese Application No. Hei 11-349433, and 2000-354846. Hei 11-349433 was filed in Japan on December 8, 1999, and Japanese Patent Application No. 2000-354846, filed in Japan on November 21, 1999. The present application, therefore, was filed before the '032 patent under US law for the purposes of the rejection under the judicially created doctrine of non-statutory obviousness-type double patenting.

Applicants, therefore, respectfully assert that the rejection of claims 33-37 under the non-statutory obviousness-type double patenting rejection of claims 33-37 (in view

of claims 1, 11 and 14 of '032 patent) and in view of Yamamoto is obviated, and request withdrawal of the same claim rejections.

In view of the above, applicants submit that this application, including pending claims 33-37, is in condition for allowance, and respectfully request allowance and that a Notice of Allowance be issued. If the Examiner believes that a telephone conference with Applicants' attorneys would be advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned.

Respectfully submitted,



John F. Vodopia

Registration No.: 36,299

Attorney for Applicants

Scully, Scott, Murphy & Presser, P.C.
400 Garden City Plaza, Suite 300
Garden City, New York 11530
(516) 742-4343

JFV:gc